

LATHAM & WATKINS LLP

Daniel M. Wall (*Admitted Pro Hac Vice*)
Christopher S. Yates (*Admitted Pro Hac Vice*)
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
(415) 391-0600

Attorneys for Defendant Apple Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HERBERT H. KLIEGERMAN, on behalf of himself and
others similarly situated,

Plaintiff,

-against-

APPLE, INC. and AT&T MOBILITY, LLC,

Defendants.

07 Civ. 08404 (PKC)

**DECLARATION OF BOB BORCHERS IN SUPPORT OF DEFENDANT APPLE'S
MOTION TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(a)**

I, Bob Borchers, declare as follows:

1. I have been employed with Apple Inc. (Apple) since August 23, 2004. I work for Apple in Cupertino, California and presently hold the position Senior Director, iPhone Worldwide Product Marketing. I understand that the plaintiff in this case asserts that Apple's exclusive distribution agreement with AT&T Mobility regarding the iPhone violates the antitrust laws and that Apple's conduct after the commercial release of the iPhone in June 2007, including software update 1.1.1, violates various consumer protection laws. I provide this declaration in support of Apple's motion to transfer this case from the Southern District of New York to the Northern District of California. As demonstrated below, the statements in this declaration are based upon my personal knowledge or corporate records maintained by Apple in the ordinary course of business.

2. Apple is a California corporation headquartered in Cupertino, California. Apple designs, manufactures, and markets personal computers, portable digital music players, and mobile communication devices and sells a variety of related software, services, peripherals, and networking solutions.

3. Apple's iPhone was conceived, designed and developed at Apple's headquarters in Cupertino, California. The numerous Apple employees involved in the development, engineering, marketing, analysis and business decisions related to the iPhone (including the vast majority of United States iPhone operations) are based in Cupertino, California. Thus, nearly all potential Apple witnesses, of whom I am aware, concerning the conception, design, development, and ongoing support of the iPhone in the United States are located in Northern California.

4. As part of my duties at Apple, I participated in or was otherwise aware of Apple's negotiations regarding the distribution agreement with Cingular Wireless (now AT&T Mobility)

challenged by plaintiff. This agreement was primarily negotiated in California and in Atlanta, Georgia. Eddy Cue signed the distribution agreement on Apple's behalf. Mr. Cue will be a key witness regarding the development, operation, marketing, sales and business decisions related to the iPhone. Mr. Cue works and resides in Northern California.

5. The Apple software and hardware engineers involved in software release 1.1.1 (which I understand to be a focus of plaintiff's lawsuit) work in groups headed by Scott Forstall and Tony Fadell. Messrs. Forstall and Fadell and the key members of their teams work and reside in Northern California.

6. The vast majority of Apple's electronic and hard-copy documents related to the design and development of the iPhone, the negotiation of the distribution agreement with AT&T Mobility, and the ongoing support of the iPhone are located in Northern California.

I declare under penalty of perjury under the laws of the United States of America and the laws of the State of California that the foregoing is true and correct.

Dated: January 17, 2007



BOB BORCHERS